85-1302

No. A-489

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.

In the Supreme Court of the United States

OCTOBER TERM, 1985

MARSHALL C. SPIEGEL,

Petitioner,

vs.

CONTINENTAL ILLINOIS NATIONAL BANK and LEONARD A. NELSON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

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QUESTIONS PRESENTED

1. Whether Petitioner's Constitutional rights were violated when the Courts of last resort of the State of Illinois failed and refused to exercise their supervisory power to protect litigants from violations of their Constitutional rights.

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The petitioner Marshall C. Spiegel respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Illinois in refusing to accept a petition for leave to appeal filed from the adverse order of the Appellate Court of Illinois.

OPINION BELOW

The opinion of the Appellate Court of Illinois is not reported. However, it appears in the Appendix hereto. No written opinion was rendered by the Supreme Court of Illinois except to deny the petition for writ of certiorari.

JURISDICTION

The decision of the Supreme Court of Illinois in denying leave to appeal was rendered on October 2, 1985. A timely motion to extend the time or enlarge the time for filing petition of certiorari was granted by this Court, a copy of which is attached in the Appendix hereto.

STATEMENT OF THE CASE

Petitioner's father, one Oscar Spiegel, while dying of cancer, became settlor of an insurance trust which provided for the Continental Illinois National Bank (hereinafter CINB) to be trustee for the benefit of Spiegel's then-minor son, petitioner herein. The trust provided that CINB was to be the sole trustee until the petitioner became 25 years of age. At said time, petitioner would be the co-trustee and exercise very, very broad powers. An excerpted copy of the Trust Agreement is attached in the appendix. At all times relevant, the trust provided for the income beneficiary (petitioner herein) to have the power to remove the trustee. The trust did not specify or have any words or phrases which placed a mandatory requirement on income beneficiary to appoint a corporate trustee.

Petitioner herein, Marshall C. Spiegel, was appalled by the mismanagement of the Oscar Spiegel Trust for the reasons specified in his counterclaim against CINB presently pending in the Circuit Court. In particular, he discovered that the trustee breached its fiduciary relationship by not crediting money properly to the Trust, incurred unreasonable attorneys' fees relative to unnecessary actions, was not candid with him and acted as if it were the beneficiary of the trust, rather than Spiegel. See Paulsen letter which appears in the appendix herein.

Contemporaneously with becoming 25 years of age, Spiegel sought legal counsel not jointly employed by CINB in any capacity and terminated CINB as trustee. (A common practice of CINB and other trustees is to employ as counsel for the trust a lawyer who provides the trustee with business — usually the trust business in issue.)

CINB refused to be terminated and filed an interpleader action in Circuit Court of Cook County, which alleged in part that it turned over the assets of the trust to the Clerk of the Circuit Court of Cook County (Interpleader action being an action where a stakeholder sued the claimants, turned the assets over to the Clerk of the Court and was dismissed with its costs). In fact, CINB maintained the assets in its possession when it filed the aforesaid lawsuit in the Chancery Division of the Circuit Court of Cook County. The lawsuit was assigned to Reginald Holzer, a judge presently on trial in the U.S. District Court for the Northern District of Illinois on approximately 39 counts of mail fraud and Racketeering. A copy of the updated version of Judge Holzer's indictment is attached in the Appendix.

Following the pattern disclosed in the indictment of Judge Holzer, Judge Reginald Holzer appointed Kenneth Prince as trustee to protect the interests of the unborn children of Marshall C. Spiegel, (your petitioner). The rationale for the appointment was that Judge Holzer felt that petitioner had a conflict of interests with his unborn children. *Judge Holzer apparently thought there was no conflict of interest with CINB and it was perfectly proper for him and his appointees to be pecuniarily indebted to CINB for thousands of dollars.* (Further, neither Prince, Holzer, nor Nelson ever felt bound by the canons of ethics

to disclose their pecuniary involvement with CINB, but the same was kept totally secret until disclosure of Judge Holzer's extra-circular income was made by the United States Attorney.

Neither Mr. Prince nor his successor Mr. Nelson was a corporation as required by the trust agreement, and neither Prince nor Nelson met any criteria set by the trust agreement. A copy of the order appointing is attached hereto in the Appendix. Neither Holzer, the trustees Kenneth Prince nor Leonard Nelson ever disclosed the pecuniary relationship to the plaintiff, CINB. The bizzare appointment was protested by petitioner who then was soundly "spanked" by the assessment of fees for Mr. Prince who was little more than the alter-ego of CINB espousing a position reasonably calculated to earn additional fees for CINB and Mr. Leonard Nelson who failed to perform a single service for the unborn children of petitioner.

Mr. Nelson (an associate of Mr. Prince) was appointed as successor to Mr. Prince after Mr. Prince was appointed by the Supreme Court of Illinois to the State judiciary. Mr. Nelson is a member of Mr. Prince's law firm. Mr. Prince subsequently resigned from the judiciary and returned to his private practice and is now again associated with Mr. Nelson in the practice of law.

The instant appeal is the second appeal in a series. On Oct. 28, 1982 and November 16, 1982, Judge Holzer rendered a decision which is contained in the Appendix. These decisions were appealed. Mr. Nelson appeared and defended the award of fees to Mr. Prince. Nelson represented untruthfully that there was no objection by Spiegel to the fees. The Appellate Court rendered its initial ruling which was based in part upon its determination that there was no objection. Spiegel supplemented the record with

the transcript of the hearing and the Appellate Court granted rehearing and rendered a second opinion correcting the error.

On June 29, 1983 CINB made application for fees for itself. Nelson on May 31, 1984 made application to Judge Holzer for fees for himself.

On June 29, 1983 Holzer determined he did not have jurisdiction, denied fees to CINB and on September 6, 1984 granted fees to Nelson. Copies of the orders are contained in the Appendix.

Spiegel appealed to the Appellate Court of Illinois from the decision awarding Nelson fees. The gravamen of his appeal was that Nelson failed to do anything which benefited the unborn children of Marshall Spiegel, or perform any services for the benefit of the trust. In his brief filed in the Appellate Court, Spiegel noted that during the interim, CINB avoided a bankruptcy and became subject to the most massive bailout in the pecuniary life of the Republic. CINB's infamy, dreadful trust administration and outright corruption became legend. Nelson (Prince's law associate) saw no conflict of interest and no problem when CINB removed over $70,000, from the Oscar Spiegel Trust without either authority or Court permission. In fact, it is appropriate to state that Nelson attorned and condoned every action of CINB, no matter how venal.

The Appellate Court of Illinois rendered a decision which is contained in the Appendix herein. The decision avoids and fails to address the issues raised by the appeal. The Appellate Court decision and the refusal of the Supreme Court to hear the appeal of Mr. Spiegel ignored the high-sounding language and affirmation of fiduciary principles of recent Illinois cases of *Parsons* v. *Estate of*

Wambaugh (1982, 1st Dist.) 110 Ill. App. 3d 374, 66 Ill. Dd 571, *Estate of Swieciki* 477 N.E. 2d 488, and *Home Federal S.&L.* v. *Zarkin* 89 Ill. 2d 232, 59 Ill. Dec. 8 841, 20 ALR 4th 721. These cases set forth a standard for trustees and fiduciaries akin to that historically imposed on fiduciaries, the prime requirement being that a fiduciary is paid for the work that was necessary for the benefits and a fiduciary acted at all times even to its own peril, for the benefit of its ward. In the instant case, the Court took the position that the fiduciary could run roughshod over the rights of its ward, the Court — appointed fiduciary need only exist and appear alive and corporeal in the Court to obtain fees.

The inconsistency between the cases cited and the absurdity of the appointment of Prince and Nelson, due to their undisclosed dealing with CINB, the plaintiff, denied petitioner Marshall Spiegel equal protection of law and equal access to the law. The testimony in proceedings now pending in the United States District Court against Judge Holzer suggests that some decisions were purchased by the highest bidder and favors were meted out by deserving friends and patrons of Judge Holzer being awarded receiverships, guardianships, and other appointments, in addition to Judge Holzer's nondisclosed financial dealing with plaintiff CINB. (See January 21, 1986 Chicago Sun-Times Article Contained in the Appendix.)

REASONS WHY CERTIORARI SHOULD BE GRANTED

Decisions below illustrate the recurring problems concerning efforts to provide substantive justice, equal protection of the law as granted by the Fifth and Fourteenth Amendments to the Federal Constitution and access to an independent judiciary as protected by the U.S. Constitution. "Greylord" (the media name for the investigation of the Justice System in Chicago) judges deny remedy to honest litigants and these litigants cannot be swept aside and be told by the Justice System that the fact of their drawing corrupt judges is "too bad "and they must lose their valuable rights!!

The Illinois Constitution, Article I Section 12 reads:

> "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely and promptly."

The Illinois Courts have looked upon this provision as horatory, *Nolin v. Nolin*, 68 Ill. App. 2d 54, 215 N.E. 2d 21, ALR 3rd 748 however, the Wisconsin Courts have stated:

> "it guarantees that person will not have to bribe or make arbitrary payments to officials in order to obtain justice. *State ex rel. Baker* v. *County Court of Rock County, Branch* (1965) 29 Wis. 2d 1, 138 N.W. 2d 162, 19 ALR 3d 1089."

Similarly such a provision has been the basis of the waiver of costs for indigents. In *Mars* v. *Lugg* (1972) 155 W.Va. 651, 186 SE 2d 768, 52 ALR 3d 839 the "***guarantee of access to justice***" was tied to the ***due pro-***

cess clause of the federal Constitution. Lugg provides that the due process clause prohibits a state from denying litigants access to the "courts" solely because of the individuals inability to pay required fees and costs.

For the Courts of Illinois and in particular the Courts of Last Resort, to deny litigants in pending cases a remedy for wrongs when judges are found *during* the litigation to have schemed with equally corrupt court-appointed officials to deny equal protection of the law is a denial of equal protection of the law under the United States Constitution which cannot be countenanced in a democratic republic (see *United States* v. *Holzer,* 85 CR 287, Indictment filed October 2, 1985 and proffered evidence docketed October 18, 1985). It is for this reason that petitioner urges this Supreme Court of the United States to accept jurisdiction, hold an appropriate hearing and instruct by way of Mandamus the Illinois Supreme Court to, in accordance with the United States Constitution and the Illinois Constitution, unwind the web of evil and in particular vacate awards and judgments which are suspect and improper.[1]

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[1] The spectre of the "Greylord" judge, who has direct and indirect loan obligations with the CINB, appointing a guardian who has loans with the CINB, in litigation wherein the sworn complaint of the CINB is at best inconsistent with objective reality and whose public conduct as a matter of public knowledge patently violates Federal Law and Regulation to protect the "unborn" descendants of an individual who has been defrauded by the fiduciary CINB from a *possible conflict of interest between themselves and their prospective parent* is not only outrageous but dangerous to the Justice System as it makes a mockery out of the law.

The instant case is unique and one particularly appropriate for review for the following reasons:

1. It is still pending in the Circuit Court of Cook County. The Court has not ruled on issues involving the corruption of CINB and therefore this Court can mandamus the Circuit Court to obviate and vitiate the issues of the conflict of interest of Judge Holzer and his conduct herein.

2. Nelson and Prince appointed by the Court are subject to the Court's jurisdiction and thus directly responsible for not disclosing their conflict of interests. A copy of a document appearing of record in the Recorder of Deeds' office appears in the appendix of this brief demonstrating in part the relation between CINB, Nelson, and Prince.[2] It demonstrates a clear conflict of interest between Prince and the unborn children of Marshall C. Spiegel far in excess of any conflict of interest that a parent might have with his children. Thus this Court can deal effectively with Prince (trustee) and Leonard Nelson.

3. This Court has a unique opportunity to go on record as not condoning the questionable actions that the indictment of Judge Holzer suggests were part and parcel of justice in Cook County. The unrelenting avarice of the Justice system is demonstrated by the presently pending motion of Leonard Nelson for additional fees. A copy of this motion and Mr. Spiegel's response is attached to this petition.

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[1] (Continued)

Historically Lawyers and Judges have been conceived by the public as less than desirable citizens. Charles Dickens in Bleak House was not a "voice in the wilderness" when he portrayed lawyers. Kant and Shakespeare are reputed to have suggested that the solution to society's problems was to eliminate the lawyers!!

[2] The deposition of Nelson, included in the appendix on pages 216 and 229 admitting to the conflict of interest of Nelson.

On page 5 of the indictment of Judge Holzer (85 CR 287) by the Grand Jury filed on Oct. 2, 1985 the United States District Court for the Northern District of Illinois recognizes:

> "The constitution of the United States guaranteed to every person appearing in state of federal court in the United States the right to due process of law. This right entitled every person, in both civil and criminal cases, to a neutral and impartial judge, who was not subject to any factor which would offer a possible temptation to the average person to favor one side or the other in a case."
>
> "Illinois statutes and court decisions required a judge to disqualify himself in a case where financial or other conflicts of interest existed, or where the judge had any other interests which could be viewed as having a potential effect on his impartiality as a decision maker."

The Government's "Proffer of Evidence, Admissible over Hearsay" objections docketed Oct. 18, 1985 which is part of the appendix is submitted to this Court as additional reason to mandamus the Supreme Court of Illinois to exercise its supervisory jurisdiction to undo the grievous wrong done by Judge Holzer and his appointees to Illinois litigants such as the instant petitioner. An illusory remedy, and high sounding words written in briefs, lawyer documents, court opinions, and Constitutions which are not backed by affirmative and decisive remedy correctly place the Law and the Justice System in the disrepute it enjoyed in song, literature, and reality in the Seventeenth, Eighteenth, Nineteenth, and early Twentieth Century.

CONCLUSION

For the reasons stated supra, a Writ of Certiorari should issue to review the judgments found in the appendix and to mandate to the Circuit Court of Cook County the obviation and abrogation of the injustice that has been perpetrated in the Courts of Cook County.

Respectfully submitted,

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APPENDIX

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Media Commentary

Supreme Court, U.S.
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Supreme Court of the United States

October Term, 1985

MARSHALL C. SPIEGEL,

Petitioner,

vs.

CONTINENTAL ILLINOIS NATIONAL BANK and LEONARD A. NELSON,

Respondents.

SUPPLEMENT TO APPENDIX FOR PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

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Third Division Filed 4-10-85

No. 84-2290

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CONTINENTAL ILLINOIS NATIONAL BANK,
Plaintiff-Appellee,

v.

MARSHALL C. SPIEGEL,
Defendant-Appellant.

Appeal From The Circuit Court Of Cook County
Honorable REGINALD HOLZER, *Presiding*

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

Marshall C. Spiegel appeals from an order of the trial court awarding Leonard A. Nelson fees and costs in the amount of $3,641. The award was granted for Nelson's services as trustee and attorney representing the interests of the unborn beneficiaries of the Oscar Spiegel Insurance Trust. Marshall Spiegel is the sole beneficiary of the trust.

This is the second appeal arising out of this cause of action. The original controversy concerned the beneficiary's exercise of his right to remove Continental Illinois National Bank of Chicago as a co-trustee. At the same time, the beneficiary announced that he would act as sole trustee and requested Continental to turn the assets over to him. Continental refused to make the transfer on the ground that the beneficiary was obligated by the terms of the trust to appoint a successor corporate trustee to whom Continental would transfer the assets. The trial court appointed a trustee/attorney for the unborn beneficiaries and later appointed Nelson as a successor trustee/attorney to represent those interests. The trial court subsequently ruled that under the trust agreement a corporate trustee is required and that removal of a cor-

porate trustee was effective only upon the beneficiary's appointment of a qualified successor corporate trustee. The trial court also awarded Nelson's predecessor as attorney/trustee of the unborn heirs fees and costs in the amount of $4,787.50. The beneficiary appealed both orders, challenging, among other things, propriety of the appointment of Nelson and his predecessor as attorney and trustee for the unknown heirs. On September 7, 1983, in a Rule 23 order, 82-2834, we affirmed the holdings of the trial court.

Subsequent to the appeal, the beneficiary appointed the First National Bank of Highland Park as a co-trustee of the trust. Thereafter, Nelson filed a supplemental petition for fee and costs incurred in the appeal. The trial court granted Nelson's petition, and the beneficiary again appeals.

The beneficiary initially contends that Nelson's appointment by the trial court was improper. He argues that since the trust agreement mandated the appointment of a corporate trustee, the trial court was compelled to appoint a corporate trustee to represent the interests of the unborn beneficiaries.

In our earlier decision, we disposed of the issue of the propriety of Nelson's appointment adversely to the beneficiary. There, we stated:

> "We find the beneficiary's argument that the court's appointment of a trustee for unborn contingent beneficiaries was improper and unnecessary to be without merit. When it appears that 'any person or persons not in being are or may become entitled to * * * any future interest * * * in any property, real or personal, involved in such suit,' the trial court is authorized to appoint a disinterested trustee to represent the interests of such persons in the suit. (Ill. Rev. Stat. 1981, ch. 110, par. 356, now codified as ch. 110, par. 2-501.) Possession and control of the trust assets were very much in issue here, and it was appropriate for the trial court to appoint a disinterested trustee to

represent the interests of unborn contingent beneficiaries."

That holding is the law of the case and we, of course, adhere to it. We also note that the beneficiary's contention that the trial court was constrained to appoint a corporate trustee to represent the contingent beneficiaries because the beneficiary was required by the trust agreement to appoint a corporate co-trustee to be groundless. The trial court derived his power to appoint, not from the trust agreement, but from the statute. The court's appointment of Nelson was proper.

We also find that the trial court's award of fees and costs to Nelson for services rendered on the first appeal was proper.

Under this heading, the beneficiary first argues that Nelson took the same position as Continental throughout the proceedings and thus performed no services for the unborn heirs. The fact that Nelson and Continental agreed on the issues demonstrates no dereliction on his part. Indeed, on all the issues presented to this court, their positions have been upheld.

The beneficiary also maintains that the trial court was not justified in awarding fees without a hearing and testimony as to the value of the services. Nelson supported his petition with an affidavit explaining the services he had rendered and setting forth a list of the hours he had worked. In the first appeal, Nelson filed a brief and presented oral argument to this court. At the hearing on Nelson's petition, the beneficiary did not seek to examine Nelson on his affidavit and made no request to present testimony contrary to Nelson's affidavit. The court's award to Nelson was proper.

Accordingly, the order of the circuit court of Cook County awarding Leonard A. Nelson $3,641 is affirmed.

Order affirmed.

WHITE, P.J., MCNAMARA AND RIZZI, J.J.

ILLINOIS SUPREME COURT
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October 2, 1985

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No. 61869 - Continental Illinois National Bank & Trust Company of Chicago, as a Trustee, etc., et al., respondents, v. Marshall C. Spiegel, Indv., etc., petitioner. Leave to Appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 23, 1985.